



Office of City Manager

April 11, 2011

Matt Cohn
Legal Enforcement Program
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Dear Mr. Cohn:

Thank you for your letter of March 31, 2011. We welcome the opportunity to meet with the entire EPA negotiating team, including Regional Administrator James Martin, to discuss the apparent obstacles to the proposed Multi-Party Settlement Agreement and a possible path forward. Park City also supports the suggestion that United Park City Mines Company participate directly in that meeting. As we have indicated a number of times, UPCM's refusal to negotiate directly with Park City has hindered progress and unreasonably burdened you with a shuttle negotiation.

Background and PCMC Position on Waiver

We appreciate EPA's efforts over the past several months and EPA's interest in a timely settlement. Park City is committed to finding a comprehensive solution to a new repository and to address issues in the watershed and on its properties. Negotiations were proceeding reasonably and it appeared, overall, the major terms of the proposed settlement were fair. However, in February, UPCM demanded that Park City provide UPCM an overly-broad private covenant not to sue or use any municipal authority against them regarding any environmental issue in two entire watersheds.¹ UPCM also demanded that we make no "representations...to federal, state or local government authorities" or "statements...to the media or members of the general public" regarding environmental issues in these watershed. These requests were far

¹ "Respondents agree that they shall not make any allegations or assert any claims against each other for liability for environmental or contaminant issues at the Site or within either the Silver Creek watershed or the East Canyon Creek watershed, or anywhere tributary to the foregoing, including, by way of example and not by way of limitation, Empire Canyon, Empire Creek, Thayne's Canyon Creek, Judge Tunnel, Spiro Tunnel, and Prospector Drain. This prohibition shall include, by way of example and not by way of limitation, actions filed in a court of law, administrative or municipal undertakings or actions, representations made to federal, state or local government authorities, and statement made to the media or members of the general public."

outside the bounds of EPA's standard covenants not to sue for matters addressed in a CERCLA settlement and are unreasonable by any standard.

Park City understands EPA's position that "the benefits of the agreement will not be achieved unless UPCM and Park City agree." However, UPCM should not be allowed to hold our community hostage (so to speak) on a repository solution with such an unreasonable request and we hope EPA would agree. Park City is extremely concerned about granting UPCM a very broad waiver of future unknown claims and will not agree to withhold important environmental information from fellow government agencies and members of the public. It would be next to impossible to justify these proposed terms to the community and a future City Council. Moreover, it may be unlawful for Park City to agree to such terms. Park City proposed a scope of waiver in its March 15, 2011 letter that we can tolerate as part of a comprehensive settlement in its current form and that reflects what the value of that waiver ought to be.

Park City also has concerns about the lack of certainty about the costs of an OU3 removal action and the viability and location of a new repository. The Mayor and Council will not lightly commit taxpayer funds to share in a percentage of unknown repository and cleanup costs, in addition to tipping fees, when the range of estimated costs is so varied and depends largely on the yet-to-be determined location of the repository and scope of cleanup. Park City may need to raise taxes and water rates to fund the project.

Supplemental Proposal of PCMC Re: EE/CA Process

Given Park City's serious concerns about UPCM's current position on a waiver and the present uncertainties of the proposed OU3 removal action, Park City would like to explore with EPA and UPCM the potential to commit now to the OU3 and 4 Engineering Evaluation/Cost Analysis (EE/CA) and subsequently reach a Multi-Party Agreement for a removal action when the parties are better informed by the EE/CA process. As you know, this is a more traditional approach to settlement of these matters. Further, this approach will ensure the parties move forward to investigate and analyze the appropriate response actions, and when complete, will provide enough certainty to allow the parties to revisit the major terms of a subsequent removal action agreement.

Park City remains willing to participate in the funding of a mediator for negotiations regarding a subsequent Multi-Party Agreement to complete a removal action at OUs 3 and 4. If the parties are able to come to an agreement, it would serve as the basis for the Settlement Agreement and removal action, if approved by EPA. If the parties are unable to come to an agreement, EPA retains all the rights and authorities it currently has to address the site. Regardless of the outcome of those negotiations, Park City is committed to addressing OU4 (the Prospector Drain and biocell) and that could be reflected in an agreement. We hope EPA is willing to explore this

option, which would break the deadlock on these stalled negotiations and likely could result in a win-win-win situation.

PCMC Comments on Site of a Future Repository

The EE/CA would be the process to determine the best location for a repository. There may be potential repository locations other than the two indicated in EPA's March 31 letter. However, to be responsive to EPA's March 31 letter setting forth pre-requisites to a meeting with the Regional Administrator, Park City has the following initial comments about siting a repository:

"Pace" (SS-28-A-X, SS-28-A-1-X, SS-27-B-X)-For nearly a year, staff, EPA, and more recently, UPCM have assumed a new repository would be located in the upland portion of the Pace parcels. Pace is a logical location because:

- It is Park City owned and controlled.
- It is already contaminated with mine waste.
- It is within OU2 (already slated by EPA for cleanup).
- Its location would reduce the overall cost to clean up the Pace parcels.

However, a repository at Pace presents concerns as well:

- It is next door and within the view shed of Promontory—a luxury home community in Summit County.
- It is largely wetland.
- It is in a relatively natural, pastoral condition (as opposed to an existing tailings pond).

Richardson Flat Expansion-Expanding the existing repository into Park City's 30-acre lease at Richardson Flat OU1 (the Park & Ride and proposed ball fields) was explored briefly as a potential repository location last summer. The existing repository may also be expanded to other contiguous UPCM-owned land. Expanding the existing repository is attractive because:

- It consolidates contaminated waste in one location.
- It is owned by UPCM, and leased for 99 years by Park City.
- It is located away from residential areas.

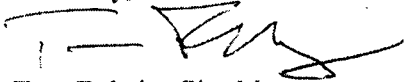
However, expanding the existing Richardson Flat repository presents concerns as well:

- EPA has expressed serious concerns about the viability of the existing repository and may look unfavorably at an expansion.
- It may add hauling costs to the cleanup of OU3 and the Pace parcel (if Pace waste cannot be consolidated and managed at Pace).
- It may require the City to give up the 30-acre lease (the City would reasonably seek some form of "compensation" for this from UPCM since the lease is part of an existing Development Agreement with UPCM, separate from this matter).
- If the expansion included the demolition of the Park and Ride lot, it may require the relocation of the parking infrastructure, including meeting any requirements of the Federal Transit Administration (FTA), which issued a \$1.5 million grant to Park City for the project and must concur with any proposal for demolition. They

view this as a federal transit asset and likely would require the replacement of this asset.

We look forward to discussing these issues with you, the Region 8 team and Regional Administrator Martin at your earliest convenience. Please contact Joan Card regarding scheduling details.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tom Bakaly', written over a horizontal line.

Tom Bakaly, City Manager
Park City Municipal Corporation

cc Mayor and City Council
Mark Harrington, City Attorney
Thomas Daley, Deputy City Attorney
Joan Card, Environmental Regulatory Affairs Manager
Diane Foster, Environmental Sustainability Manager
Jason Christensen, Environmental Legal Coordinator
Lori Potter, Kaplan, Kirsch and Rockwell